

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 479 CUTTACK, WEDNESDAY, FEBRUARY 20, 2008 / FALGUNA 1, 1929

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th February 2008

No. 1456—li/1(J)-6/2008-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th July 2007 in Industrial Dispute Case No. 66 of 1999 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Management of M/s Sitaram Rice and Flour Mill, Bada Oriya Street, Parlakhemundi, Dist. Gajapati and its workman represented through the President/Secretary, Mill Workers Union, Keveti Street, Parlakhemundi was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 66 OF 1999

Dated the 30th July 2007

Present :

Shri G. K. Mishra, O.S.J.S. (Jr. Branch)
Presiding Officer, Labour Court
Jeypore, Dist. Koraput.

Between :

The Management of	.. First Party—Management
Sitaram Rice and Flour Mill	
Bada Oriya Street, Parlakhemundi	
At/P.O. Parlakhemundi, Dist. Gajapati.	

Versus

Its Workman	.. Second Party—Workman
Represented through	
The President/Secretary, Mill Workers Union	
Keveti Street, Parlakhemundi	
At/P.O. Parlakhemundi, Dist. Gajapati.	

Under Sections 10 and 12 of the Industrial Disputes Act, 1947

Appearances :

For the Management	..	None
For the Workmen	..	Shri D. Venkat Rao, Workers Union, Parlakhemundi.
Date of Argument	..	11-7-2007
Date of Award	..	30-7-2007

The Government of Orissa in the Labour & Employment Department in exercise of the powers conferred upon them under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 7046(5), dated the 24th May 1999 for adjudication of the following dispute :—

SCHEDULE

“Whether the termination of services of Shri Pitta Somesu, Driver and Shri Kalu Malesu, Khalasi by them employer of M/s Sitaram Rice and Flour Mill, Bada Oriya Street, Parlakhemundi, Dist. Gajapati with effect from the 20th January 1998 is legal and/or justified ? If not, to what relief the workman Shri Pitta Somesu, Driver and Shri Kalu Malesu are entitled ?”

AWARD

2. The is a case seems to have been originated out of the reference submitted by the Government for determination of the disputed issues regarding the justifiability or validity of the termination effected by the management in respect of the work with effect from the 20th January 1998 coupled with the consequent relief to be obtained by the workman.

3. The plea taken by the workman in short form that thought they were continuously engaged under the first party management, no notice was served on them prior to termination. As a matter of fact the workman basing upon some demand launched strike which was culminated at the intervention of the Collector, who advised the management to allow the workman to work in the Mill. But the management refused to accept them resulting in the termination which is purely illegal.

4. On the contrary the management traversed the entire plea taken by the workman and contended *inter alia* that the workman Pitta Somesu consequent upon the closure of strike when invited to join in his duty did not respond to the call on the score of his being employed in another Mill. The abandonment of service by such workman cannot be considered as retrenchment or termination. Furthermore the management denied to have/had any relationship the management and such workman. Therefore, his termination cannot be said to have occasioned for which the management claims for dismissal of the case.

5. It is not disputed fact that Pitta Somesu was employed as a Driver by the management for a consolidated period till the termination has effected. He appears to have served as a worker on seasonal basis, during harvest seasonal, as alleged by the management. However the continuity of the service of such workman has not been disputed. The workman might be a casual labourer or piece rated labour or daily wages worker is not materials but they should be continuing in the service so as to attract Section 25-F of the Industrial Disputes Act ingnoring the definition of retrenchment as stipulated under Section 2(oo) of the Industrial Disputes Act. Non-renewal of casual labourers though does not come under retrenchment but if such worker has completed period of 240 working days in a Calendar year their right must be protected under Section 25-F of the Industrial Disputes Act. The Industrial Disputes Act is a beneficial as well as social legislation for welfare and protection of the workers. This Act has been enacted taking into consideration of the fundamental rights enumerated under Section 21 of the Indian Constitution and under the Directive Princples of State Policy. Since their livelihood depends upon the service the removal from such service shall entail starvation prejudicing the interest of himself and the family members. Therefore the right of workman is to be protected under the circumstances. In this connection the duty is cast on the employer to take necessary steps for issuing notice prior to the termination so intended to be effected in respect of the workman. It is revealed from the evidence on the record from the side of the workman that prior to the termination the Union had launched a strike concerning for fulfilment of some demands and the strike was closed at the intervention of the Collector. The workers were invited to join in their duty as per the evidence supplied by the management. But in spite of notice sent through A. D. the workman did not join. The Regd. A. D. of the notice sent was placed before the workman for ascertaining the truth of the letters sent. But the workman pleaded ignorance about sending of letter. The letter sent along with the A. D. are available in the record. Showing the refusal of the workman the endorsement given by the postman in respect of the non-receipt of letter by the workman can be considered to be genuine on the basis of the presumption attached to it. Furthermore the allegation of the refusal to accept the joining of the workman could have been intimated to the Collector at whose instance the strike was called off. In absence of any remedy to be objected it can be deduced that the workman had never intended to join in his duty. It is alleged from the side of the management that the workman by the time of strike was continued was being engaged in another mill for which he did not accept the proposal for joining in the duty. The workman also voluntarily stated in his evidence that as per the request of another mill he joined with a salary of Rs. 2,000 per month. So it can be held that the contention raised by the management is true in respect of the non-acceptance of proposal for joining in his establishment. The refusal to accept for joining in the management mill will be tentamount to the voluntary abandonment of service. No latches seems to have been observed from the side of the management to accept the joining of the workman since the workman did not join in spite of invitation, the termination was issued in favour of the workman Pitta Somesu which cannot be considered as illegality and unjustified. The invitation so offered by the management can be considered as true notice to have been acquired by the workman. Further notice is not required for the compliance of the provisions of the law. Taking the aforesaid aspect up to the consideration, it is in evitable that the voluntary abandonment of service is justified by the order of termination which is founded to be justified and legal for the interest of the Management's Mill.

6. As regards the termination of the second party workman the status as a workman has been completely denied by the management taking into consideration the non-existence of the relationships between the management and the employee. It is contended that he had never been engaged as a workman under the management. Though P. W. No. 1 and P. W. 2 have testified regarding his engagement. The second party workman having not come to the court to support such contention and establish his relationship with the management, nothing can be said that he was serving under the management. No documents seems to have furnished to support of his claim and to establish the statues accrued as a employee under the control of the first party management. The said workman or the Union representing through him has not taken any steps to call for any documents from the management to prove the factum of engagement and also the relationship between them. Unless there is any existence of proof regarding the continuity of service for more than 240 days nothing can be said that the workman had served under the management in continuity in order to attract the provision under Section 25-F of the Industrial Disputes Act. In totality of the analysis it is deduced that the relation between the workman and the employee had never existed nor he was serving under him. So the termination as alleged to have been effected does not arise and issue of reference is considered to be misconceived.

7. On the basis of the aforesaid analasis it is crystal clear that the termination of Pitta Somesu is purely justified in one respect and misconceived in another respect as per the facts considered above and the termination of second party workman is misconceived.

ORDER

The reference is answered accordingly and there is no need passing of an award as per above circumstances.

Dictated and corrected by me.

G. K. MISHRA
30-7-2007
Presiding Officer
Labour Court, Jeypore
Koraput

G. K. MISHRA
30-7-2007
Presiding Officer
Labour Court, Jeypore
Koraput

By order of the Governor
K. TRIPATHY
Under-Secretary to Government